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Paper No. 10

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OFFICE OF PETITIONS

In re Application of :
John David Stratton et al. :
Application No. 09/744,664 :
Filed: September 18, 2000 : DECISION ON PETITION UNDER
Attorney Docket No. 34-105 : 37 C.F.R. §1.53
Title: ROTARY DEVICE FOR :
TRANSMISSION OF MATERIAL IN :
PARTICULATE FORM :

This is a decision on the petition filed September 9, 2004.

On September 18, 2000, the above-identified application was deposited. On May 30, 2003, the Office mailed a non-final rejection, stating that claims 1-7 are pending in this application. The present application is a continuation of PCT/GB98/01675. Upon receiving the Office Action, Petitioner came to believe that the text of the PCT was placed in the application file instead of the text of the continuation application. As such, Petitioner now requests that the text of the continuation application be placed into the file, that the Office Action of May 30, 2003 be vacated, and that a new action be mailed on the correct specification and claims.

The instant petition is further accompanied by a cover page, a 15 page specification containing 15 claims, a one page abstract, and a single drawing. Petitioner has also included a postcard receipt acknowledging receipt of "16 pages specification, claims & abstract," "15 claims," and "1 sheets (sic) of drawings" in the United States Patent and Trademark Office (Office) on September 18, 2003. The postcard bears a date-stamp from the Office of Initial Patent Examination (OIPE), as well as the text

"New Continuation Patent Application of PCT/GB98/01675." The postcard does not contain the application number.

Upon review of the file, a 16 page specification containing 7 claims and a single drawing have been located. The file does not appear to contain an abstract. Therefore, the evidence is convincing that the application papers deposited on September 18, 2000 included a continuation application consisting of a 15 page specification containing 15 claims, a one page abstract, and a single drawing, but it was the PCT which was mistakenly placed into the file.

Therefore, the continuation application, including a 15 page specification containing 15 claims, a one page abstract, and a single drawing, was complete on filing and entitled to a filing date of September 18, 2003 as part of the original disclosure.

Accordingly, the petition is **GRANTED**.

The Office Action mailed May 30, 2003 was sent in error, and is hereby **VACATED**. Therefore, no petition fee is necessary.

The application file is being returned to the Office of Initial Patent Examination for further processing:

- The application will retain the filing date of September 18, 2003.
- OIPE will enter the continuation application consisting of a 15 page specification containing 15 claims, a one page abstract, and a single drawing which were submitted with the instant petition on September 9, 2004.
- The PCT application papers will remain in the file.

OIPE will then forward the application to Technology Center 3700, so that a new Office Action can be issued on the proper application papers.

The general phone number for the Office of Petitions which should be used for status requests is (571) 272-3282. Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.



Paul Shanoski
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